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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,431	09/02/2003	Andrea C. Nasstrom	0001263/2232USU	1893

7590 07/10/2006

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EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3725

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/653,431	Applicant(s) NASSTROM ET AL.	
	Examiner Bena Miller	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-14,16-21,23-28,30-37,40-47 and 49-62 is/are pending in the application.
- 4a) Of the above claim(s) 49-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14,16-21,23-28,30-37 and 40-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

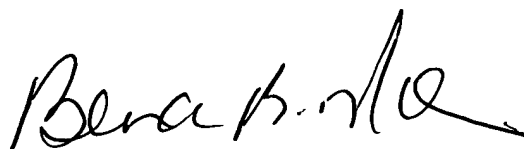
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.



DETAILED ACTION

Remarks in the RCE filed 05/24/06 are duly noted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 13 recites the broad recitation "the group consisting of a material being selected from the group consisting of a thermoplastic, a thermoset material, a rigid material, a resilient material,

a composite material, and any combinations thereof”, and the claim recites 14, a dependent of claim 13, “the material is “high impact polystyrene porene” which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-14, 16-21, 23-28, 30-37 and 40-47 rejected under 35 U.S.C. 103(a) as being unpatentable over either of Giannini (US Patent 4,860,364) or Waldron (US Patent 4,589,134) or Jelaso et al (US Patent 2,582,699) or Suzuki (US Patent 4,876,724) in view of Brunelle et al (US Patent 4,938,476).

Giannini, Waldron, Jelaso et al or Suzuki teaches most of the elements of the claimed invention including a sound generating member (32; col. 3, par. 1; 29 and 50; or fig.6, respectively) and a rigid material (col. 4, par. 1 of Jelaso et al). However, Giannini, Waldron, Jelaso et al or Suzuki fails to teach a switch activated by motion, adjustable period of non-motion and a spring cylinder trigger. Brunelle teaches an indicator device 10, attached to a wearer, including a mercury switch 31 that is used to make contact with an electronic circuitry to activate an alert means when the wearer moves in a particular position. Mercury switch 31 is positioned on plate 20 slightly above parallel to a horizontal line directly forward the wearer. Upon movement of the

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wearer, the central axis of the switch will be complete the circuitry and activate the alert means 33. The mercury switch 31 is located ten degrees above horizontal. Further, when the wearer leans forward fifteen degrees to a second position, the mercury 42 causes the alert to be activated (col. 4, lines 53- col. 5, lines 32). There is a period of non-motion when the mercury switch is at the position noted above (at the position where the switch is not making contact with the circuitry) and thus, when the wearer moves or adjusts the device within a particular range; the alert means is activated by switch 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a motion switch as taught by Brunelle in the device of Giannini, Waldron, Jelaso et al or Suzuki for the purpose of producing sound upon movement of a person. Further, it is well known the prior art that spring switches are used to activate sound or/and light in apparel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a spring switch for the device of Giannini, Waldron, Jelaso et al or Suzuki for the purpose of producing sound when activated.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Bena Miller
Primary Examiner
Art Unit 3725

bbm
July 03, 2006